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| 10/028,225      | 12/18/2001  | Gerhard Engel        | DE920000112US1      | 3157             |

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EXAMINER

PHILLIPS, HASSAN A

ART UNIT PAPER NUMBER

2151

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/028,225 | <b>Applicant(s)</b><br>ENGEL ET AL. |  |
|                              | <b>Examiner</b><br>Hassan Phillips   | <b>Art Unit</b><br>2151             |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-15, 17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 2, 16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/27/06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to communications filed on February 23, 2006.

#### ***Information Disclosure Statement***

2. The information disclosure statement filed February 27, 2006, has been received and considered by the examiner.

#### ***Oath/Declaration***

3. After consideration of the oath/declaration filed on January 11, 2006, examiner has withdrawn the objection to the oath/declaration.

#### ***Response to Arguments***

4. Applicant's arguments filed February 23, 2006 have been fully considered but they are not persuasive. Applicant argued that:
  - a) Young neither discloses or suggests "the system comprising a queue manager which includes a request queue and an active queue for handling the remote distribution", as recited in claim 9;
  - b) Nothing in Young discloses or suggests the use of both the push-mode and the pull-mode (or at least 2 distribution/installation modes) in the same software distribution system as recited in claim 9;
  - c) Nothing in the cited portion of Young discloses or suggests checking for the overloading of an active queue as recited in claim 10;

- d) Young neither discloses or suggests “based on at least two distribution/installation modes... checking if the at least one target data processing system is available; performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is available; ...switching the distribution/installation mode if the distribution/installation is not successful;
- e) There is no motivation to modify Young as suggested in the Office Action;
- f) It appears that the Office Action only gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by applicant’s disclosure.

Examiner respectfully disagrees with applicant’s assertions.

5. Regarding item a), examiner submits the “client configuration manager (CCM)” taught by Young reads over applicant’s claimed “queue manager”, the “CCR queue” taught by Young reads over applicant’s claimed “request queue”, and the “retry queue” taught by Young reads over applicant’s claimed “active queue”, (see Young, col. 2, lines 21-64, col. 9, line 61-col. 10, line 31). Therefore, examiner maintains that Young reads over claim 9 as it currently stands.

6. Regarding item b), in response to applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which

applicant relies (i.e., “the use of both the push-mode and the pull-mode in the same software distribution system”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner further maintains that Young teaches at least 2 distribution/installation modes since, as acknowledged by applicant in the remarks, Young discloses the use of push-mode or pull-mode software distribution, (Young, Abstract, col. 2, lines 21-64, and Fig.’s 6-7).

7. Regarding item c), examiner submits that it is inherent in the teachings of Young that an active queue is checked for overloading. As previously mentioned, Examiner has interpreted applicant’s claimed active queue as Young’s retry queue. Young inherently teaches checking for the overloading of an active queue where Young teaches the CCM dynamically adjusting (a configurable) number of threads used thereby “depending on the size of the queue”, (Young, col. 9, line 61-col. 10, line 8).

8. Regarding item d), examiner maintains Young teaches checking if the at least one target data processing system is available where Young teaches the CCM “attempting to establish a connection with a remote machine”, (Young, col. 2, lines 21-35). For reasons previously mentioned examiner also maintains Young teaches performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is

available, (see Young, Abstract, col. 2, lines 21-64, and Fig.'s 6-7). Furthermore, examiner agrees with applicant that Young fails to expressly disclose switching the distribution/installation mode if the distribution/installation is not successful, and has indicated this in the previous action. Examiner does maintain, however, that such a modification to the teachings of Young would have been obvious to one of ordinary skill in the art, if not already implicit in the teachings of Young, since Young suggests the distribution/installation may be unsuccessful for reasons such as improper security rights, (col. 2, lines 27-34), and Young also suggests one of the at least two distribution/installation modes occurring when a user logs on and has the proper security rights that the alternate distribution/installation mode failed to have, (col. 2, lines 53-64).

9. Regarding item e), in response to applicant's argument that there is no suggestion to modify the reference, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the claimed invention fails to expressly disclose the use of both the push-mode and the pull-mode in the same software distribution system. Also, as previously mentioned Young suggests the distribution/installation may be unsuccessful for reasons such as

improper security rights, (col. 2, lines 27-34), and Young suggests one of the at least two distribution/installation modes occurring when a user logs on and has the proper security rights that the alternate distribution/installation mode failed to have, (col. 2, lines 53-64). Thus, examiner maintains that one of ordinary skill in the art would have found it obvious to modify the teachings of Young to switch between the two distribution/installation modes since this would have advantageously provided alternate means for a user to remotely obtain distribution/installation programs in case one mode of distribution/installation was unsuccessful, (Young, see abstract).

10. Regarding item f), in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

11. Furthermore, the Examiner has interpreted the claim language as broadly as possible. It is also the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in a manner that distinguishes over the prior art. Failure for Applicant to

significantly narrow definition/scope of the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterated the need for Applicant to define the claimed invention more clearly and distinctly. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. The rejections are thus sustained. Applicant is requested to review the prior art of record for further consideration.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 9-11, 20, are rejected under 35 U.S.C. 102(e) as being anticipated by Young et al. (hereinafter Young), U.S. Patent 6,966,060.

14. In considering claim 9, Young teaches a software distribution system for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two



distribution/installation modes, wherein the computer programs are transferred as packages which are identified in a package list, the system comprising a queue manager which includes a request queue and an active queue for handling the remote distribution, (see Abstract, col. 2, lines 21-64, Fig.'s 6-7).

15. In considering claim 10, Young teaches means for checking if a pre-specified time is exceeded, (col. 10, lines 9-31); means for checking if the active queue is overloaded and, if not, for setting the request into the active queue, (col. 2, lines 21-52, col. 9, line 61-col. 10, line 8).

16. In considering claims 11, 20, Young teaches the queue manager comprising means for checking if a current target data processing system is already active and, if not, for setting the request into the active queue, (col. 2, lines 21-52, col. 9, line 61-col. 10, line 31).

### ***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1, 3-8, 12-15, 17, 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Young.

19. In considering claims 1 and 6-8, Young teaches a method, system, data processing program for execution in a data processing system, and computer program product stored on a computer usable medium, for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two distribution/installation modes, comprising: checking if the at least one target data processing system is available, (col. 2, lines 21-35); performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is available, (col. 2, lines 21-64); monitoring if the distribution/installation is successful, (col. 2, lines 21-52).

Although the teachings of the Young disclose substantial features of the Applicants claimed invention, they fail to expressly disclose: switching the modes of distribution/installation if the distribution/installation is not successful.

Nevertheless, Young suggests the distribution/installation may be unsuccessful for reasons such as improper security rights, (col. 2, lines 27-34). Young also suggests one of the at least two distribution/installation modes occurring when a user logs on and has the proper security rights that the alternate distribution/installation mode failed to have, (col. 2, lines 53-64).

Thus, if not implicit in the teachings of Young, it would have been obvious to one of ordinary skill in the art to modify the teachings of Young to disclose switching the modes of distribution/installation if the distribution/installation is not successful. This would have advantageously provided alternate means for a user to remotely obtain distribution/installation programs in case one mode of distribution/installation was unsuccessful, (Young, see abstract).

20. In considering claims 3, 17, 19, the teachings of Young provide a means for if the number of push retries is greater than 0, moving a distribution/installation request into a hold queue and scheduling re-insertion of the request into a request queue, (col. 2, lines 21-35); if the number of push retries is equal to 0 and the number of pull retries is greater than 0, moving the request into a pull queue and restarting when the target computer system logs in, (col. 2, lines 21-35, col. 2, lines 53-64); if the number of push retries is equal to 0 and the number of pull retries is equal to 0, moving the request into an abort queue, (col. 10, lines 9-31).

21. In considering claims 4, 12, 13, the teachings of Young provide a means for queuing a distribution/installation request in a request queue and setting the distribution/installation request into an active queue when a pre-specified time is exceeded, (col. 2, lines 21-52, col. 10, lines 9-31).

22. In considering claims 5, 14, 15, the teachings of Young provide a means for detecting an active queue overload and checking if a currently selected target data processing system is already active, (col. 2, lines 21-52, col. 9, line 61-col. 10, line 31).

### ***Allowable Subject Matter***

23. Claim 2, 16, 18, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/  
5/1/06

  
**ZARNI MAUNG**  
SUPERVISORY PATENT EXAMINER